IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT BENCH JAIPUR

O R D E R

Smt. Kiran Bharti Vs. Rajasthan Non Government Educational Institution Tribunal & Others

(SB Civil Writ Petition No. 1186/98)

Date of Order : 4th December, 2006.

Hon'ble Mr. Justice KS Rathore

Mr. DP Sharma, for the petitioner.
Mr. Man Singh Gupta, for the respondents.

REPORTABLE

The petitioner was appointed by the respondent no.5, the Modern Balika Mandir Uchcha Prathmik Vidyalaya, Brahmpuri, Jaipur, as Teacher Grade-III on 31.8.87.

The services of the petitioner were terminated vide order dated 27.11.95. Being aggrieved and dissatisfied with the termination order, the petitioner preferred an appeal before the Non Government Educational Institutions Tribunal, Jaipur and the appeal of the petitioner was dismissed by the Tribunal vide its order dated 10.3.97.

This present petition has been preferred by the petitioner against the termination order dated 27.11.95 and the order passed by the Tribunal dated 10.3.97 on the ground that the dismissal order which has been passed by the respondent no. 5 is passed without following due process of law and no reasonable opportunity of being heard has been provided to the petitioner and the Tribunal also seriously erred not to consider the provisions of Section 18 of the Rajasthan Non Government Educational Institutions Act, 1989 (for short, the Act of 1989) and Rule 39 of the Rajasthan Non Government Educational Institutions Rules, 1993 (for short, the Rules of 1993) and without following due process of law, the services of the petitioner have been terminated and this aspect has not been properly considered by the Tribunal whether the provisions of Section 18 and Rule 39 in the instant case has been complied with or not and dismissed the appeal of the petitioner.

After referring Section 18 and Rule 39 and the definition clause 2(1), 2(r) and 2(s), learned

counsel for the petitioner placed reliance on the judgment of the Division Bench of this Court in the case of “Managing Committee of Army School & Another Vs. Smt. Pushpa Sharma & Others” reported in 2006 (3) Western Law Cases (Raj.) 504; the judgment rendered by the Division Bench in the case of “Saint Meera Brotherhood Society Vs. State of Rajasthan & Others” reported in 2006(1) Western Law Cases (Raj.) 677 and the judgment of Hon'ble the Supreme Court in the case of “Haresh Daya Ram Thakur Vs. State of Maharasthra And Others reported in 2000 Western Law Cases (SC) Civil 486.

Per contra, learned counsel appearing on behalf of the respondents has submitted that the petitioner was appointed purely on temporary and ad hoc basis without any advertisement and without following due process of selection and she was not qualified to be appointed being untrained. She was appointed purely on temporary and ad hoc basis without being selected as due to temporary swelling of the strength of the students on temporary basis. Since the year 1993, the strength of the students came down and there was substantial decrease in

strength of students. Only 8 posts of Assistant Teachers were sanctioned by the Education Department. A duly constituted selection committee inclusive representative of Education Department was constituted to fill up the four vacancies. Smt. Kiran Bhati also applied for one of the posts against the sanctioned posts. Her candidature was rejected and as such the petitioner was not found suitable and was not selected. As the selected candidates were made available and there was no post against which she could continue, her services were dispensed with being temporary and ad hoc and not on the basis of any mis conduct as envisaged under Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993. The respondent also referred an order dated 10.3.97.

In support of his submissions, learned counsel for the respondents referred a judgment rendered by the Division Bench in the case of “Hemant Kumar Vaidhya Vs. Adarsh Shiksha Parishad Samiti, Jaipur” decided on 11.7.97; “Rajasthan Vidya Peeth Vs. Judge, RNGEI Tribunal (SB Civil Writ Petition No. 222/98); the case of Hon'ble the Supreme Court “Dr.

G. Sarana Vs. University of Lucknow" reported in SLR 1976 (2) 509; WLC 2005 (1) 504 Fateh Chand Dammani Balika Vidya Mandir Vs. RNGET & Others and SLR 1992 (4) 776 "State of Haryana Vs. Piara Singh.

Heard rival submissions of the respective parties. Learned counsel for the petitioner referred definition clause 2(1) of the Act of 1989 by which "Employee" includes a teacher and every other employee working in a recognized institution. Clause 2(r) provides "Salary" means the aggregate of the emoluments or an an employee including dearness allowance or any other allowance or relief for the time being payable to him but does not include compensatory allowance and clause 2(s) defines "Sanctioning authority" which means an officer authorized by the State Government to sanction aid to such recognized educational institutions as the State Government may specify from time to time in accordance with the procedure to be prescribed.

So far the reference given by the petitioner with regard to the employee, salary and sanctioning authority is concerned, there is no dispute and

that the petitioner is temporary employee and paid salary. I have also carefully perused Section 18 which reads as under:-

Section 18- Removal, dismissal or reduction in rank of employees.- subject to any rules that may be made in this behalf, no employee of a recognized institution shall removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity being heard against the action proposed to be taken:

Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or an Officer authorized by him in this behalf has been obtained-

(1) to a person who is dismissed or removed on the ground of conduct which led to his conviction on a criminal charge, or

(2) where it is not practicable or expedient to give that employee an opportunity or showing cause, the consent of Director of Education has been obtained in writing before the action is taken, or

(3) Where the managing committee is of unanimous opinion that the services of an employee can not be continued without prejudice to the interest of the institution the services of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing”

Rule 39-

Removal or dismissal from service.-(1) The services of an employee appointed temporarily for six months, may be terminated by the management at any time after giving at least one month's notice or one month's salary in lieu thereof. Temporary employee, who wishes to resign shall also give at least one month's notice in advance or in lieu deposit or surrender one month's salary to the management.

An employee, other than the employee referred in sub rule (1), may be removed or dismissed from service on the grounds of insubordination, inefficiency, neglect of duty, misconduct or any other grounds which makes the employee unsuitable for further retention in service.

Thus, Section 18 deals with the removal, dismissal or reduction in rank of employees and there are certain conditions. As per proviso, no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorized by him in this behalf has been obtained.

As per the proviso to section 18, the petitioner's case is that his services have been terminated without seeking prior approval of the Director Education or by any officer authorized by

him and thus the compliance of the provisions of section 18 is not properly made while passing the termination order and as per the ratio decided by the Division Bench of this Court in the case of Managing Committee of Army School (supra), the Dismissal or termination orders become void if Section 18 is not complied with.

So far abolition of the post, the termination order can be passed as per the provisions of Section 18 but that too after following compliance of the procedure laid down under Section 18 as held by the Division Bench in the case of “Saint Meera Brotherhood Society” (supra) wherein it was held as under:-

> “Abolition of posts- Compliance of Section necessary even in case of termination of services because of abolition of post and so far termination of service compliance of section is necessary.

Similar view has been expressed by Hon'ble the Supreme Court in the case of “Harsh Daya Ram Thakur” (supra) wherein it was held that “If statute prescribed a procedure for doing a thing, that thing has to be done according to the

procedure”.

The petitioner was appointed purely on temporary and ad hoc basis without following due process of selection and 8 posts of Assistant Teachers were sanctioned by the Education Department. A selection committee was constituted and the representative of Education Department was also included in the selection committee and four vacancies were required to be filled up. The petitioner also applied and she was considered not found suitable and thus the petitioner was also not allowed to continue as temporary and ad hoc Teacher as the regularly selected teachers are made available. Since the petitioner participated in the selection process therefore plea taken by the petitioner that the provisions of section 18 in the instant case is not attracted is not tenable. As held by Hon'ble the Supreme Court in the case of Dr. G. Sarana Vs. University of Lucknow (supra) wherein Hon'ble the Supreme Court held that

> “It is not necessary to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knows all the relevant

> facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee.

Applying the ratio decided by Hon'ble the Supreme Court in the present case also the petitioner participated in the selection process and since she was not found suitable the petitioner is turn round to raise objection that while terminating the services of the petitioner has not followed the procedure of Section 18 which is not attracted in the facts and circumstances of the present case.

Hon'ble the Supreme Court also held in the case of “State of Haryana And Others Vs. Piara Singh & Others” (supra) that-

> “The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary

> appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Here, in the instant case also, the petitioner compete along with others for regular selection/appointment but was not considered suitable for appointment on the post of Teacher Grade-III and she cannot claim as a right to be continued as ad hoc and temporary teacher for indefinite period as the respondent has undertaken a regular selection and the selections are made by the duly constituted committee according to the provisions of law and the petitioner has participated. Now, at this stage, the petitioner is estopped to challenge the validity of the

termination order which is passed as the regularly selected candidate are made available and the petitioner did not succeed.

Similar view has been taken by this Court in the case of “SS Jain Subodh Shiksha Samiti, Jaipur” (supra) wherein this Court has held that-

> “Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993 are not attracted if the petitioner availed the benefit and the petitioner is estopped to challenge the terms of her appointment after completing the tenure.

Here, in the instant case also, the petitioner was given ad hoc and temporary appointment and she participated in the selection process and since she did not succeed therefore this writ petition is preferred by the petitioner challenging the termination order.

As per the discussions and observations made here in above, I find no illegality or error apparent in the termination order dated 27.11.95 and order dated 10.3.97 passed by the Tribunal and the same do not require any interference by this Court.

Consequently, the writ petition fails and hereby dismissed with no orders as to cost.

(KS RATHORE), J.